

House File 827 - Reprinted

HOUSE FILE _____
BY COMMITTEE ON WAYS
AND MEANS

(SUCCESSOR TO HF 791)
(SUCCESSOR TO HSB 21)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the recognition and licensing of professional
2 employer organizations, providing for fees and penalties, and
3 making an appropriation.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 HF 827
6 kk/es/25

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1 1 Section 1. NEW SECTION. 95.1 PURPOSE AND INTENT.
1 2 The general assembly finds that professional employer
1 3 organizations provide a valuable service to commerce and the
1 4 citizens of this state by increasing the opportunities of
1 5 employers to develop cost-effective methods of satisfying
1 6 their personnel requirements and providing employees with
1 7 access to certain employment benefits which might otherwise
1 8 not be available to them.
1 9 The general assembly further finds that professional
1 10 employer organizations operating in this state should be
1 11 properly recognized and regulated by the department of
1 12 workforce development, as provided in this chapter, and that
1 13 any allocation of the employer duties and responsibilities
1 14 pursuant to this chapter will preserve all rights to which
1 15 covered employees would be entitled under a traditional
1 16 employment relationship.
1 17 Sec. 2. NEW SECTION. 95.2 DEFINITIONS.
1 18 As used in this chapter, unless the context otherwise
1 19 requires:
1 20 1. "Administrative fee" means the fee charged to a client
1 21 by a professional employer organization for professional
1 22 employer services. However, the administrative fee shall not
1 23 be deemed to include any amount of a fee by the professional
1 24 employer organization that is for wages and salaries,
1 25 benefits, workers' compensation, payroll taxes, withholding,
1 26 or other assessments paid by the professional employer
1 27 organization to or on behalf of covered employees under the
1 28 professional employer agreement.
1 29 2. "Client" means any person who enters into a
1 30 professional employer agreement with a professional employer
1 31 organization.
1 32 3. "Coemployer" means either a professional employer
1 33 organization or a client.
1 34 4. "Coemployment relationship" means all of the following:
1 35 a. As between coemployers, a relationship whereby the
2 1 rights, duties, and obligations of an employer which arise out
2 2 of an employment relationship have been allocated between
2 3 coemployers pursuant to a professional employer agreement and
2 4 this chapter, and which is intended to be an ongoing
2 5 relationship, rather than a temporary or project-specific
2 6 relationship.
2 7 b. As between each professional employer organization and
2 8 a covered employee as to whom a professional employer
2 9 agreement applies, an employment relationship whereby such
2 10 professional employer organization is entitled to enforce
2 11 those rights, and obligated to perform those duties and
2 12 obligations, allocated to such professional employer
2 13 organization by the professional employer agreement and this
2 14 chapter.
2 15 c. As between each client and a covered employee to whom a

2 16 professional employer agreement applies, an employment
2 17 relationship whereby such client is entitled to enforce those
2 18 rights, and obligated to provide and perform those employer
2 19 obligations allocated to such client by the professional
2 20 employer agreement and this chapter and whereby such client is
2 21 responsible for any employer right or obligation not otherwise
2 22 allocated by the professional employer agreement or this
2 23 chapter.

2 24 d. As to rights enforceable by an employee under state
2 25 law, covered employees shall be entitled to enforce against
2 26 the professional employer organization all of the following
2 27 rights:

2 28 (1) Those allocated to such professional employer
2 29 organization by the professional employer agreement and this
2 30 chapter.

2 31 (2) Those shared by the professional employer organization
2 32 and the client under the professional employer agreement and
2 33 this chapter.

2 34 (3) All other rights, duties, and obligations enforceable
2 35 by an employee against the client pursuant to state law.

3 1 5. "Covered employee" means an individual having a
3 2 coemployment relationship with a professional employer
3 3 organization and a client, who meets all of the following
3 4 criteria:

3 5 a. The individual is a party to a coemployment
3 6 relationship with a professional employer organization and a
3 7 client.

3 8 b. The individual's coemployment relationship is pursuant
3 9 to a professional employer agreement subject to this chapter.

3 10 c. The individual has received written notice of an
3 11 agreement between a professional employer organization and a
3 12 client. Such notice shall include the name of the client or
3 13 professional employer organization that has obtained workers'
3 14 compensation coverage for the covered employee.

3 15 Individuals who are officers, directors, shareholders,
3 16 partners, and managers of the client will be covered employees
3 17 to the extent the professional employer organization and the
3 18 client have expressly agreed in the professional employer
3 19 agreement that such individuals would be covered employees and
3 20 provided such individuals meet the criteria of this subsection
3 21 and act as operational managers or perform services for the
3 22 client.

3 23 6. "Department" means the department of workforce
3 24 development.

3 25 7. "Director" means the director of the department of
3 26 workforce development.

3 27 8. "Licensee" means a professional employer organization
3 28 licensed under this chapter.

3 29 9. "Person" means a person as defined in section 4.1.

3 30 10. "Professional employer agreement" means a written
3 31 contract by and between a client and a professional employer
3 32 organization that provides all of the following:

3 33 a. For the coemployment of covered employees.

3 34 b. For the allocation and sharing between the client and
3 35 the professional employer organization employer
4 1 responsibilities, including hiring, firing, and disciplining,
4 2 with respect to the covered employees.

4 3 c. That the professional employer organization and the
4 4 client assume the responsibilities required by this chapter.

4 5 11. "Professional employer organization" means any person
4 6 engaged in the business of providing professional employer
4 7 services.

4 8 a. A person engaged in the business of providing
4 9 professional employer services shall be subject to licensure
4 10 and regulation under this chapter regardless of its use of the
4 11 term "professional employer organization", "PEO", "staff
4 12 leasing company", "licensed staff leasing company", "employee
4 13 leasing company", or any other similar name.

4 14 b. None of the following shall be deemed to be a
4 15 professional employer organization or professional employer
4 16 services for purposes of this chapter:

4 17 (1) Arrangements by which a person, whose principal
4 18 business activity is not entering into professional employer
4 19 arrangements and who does not hold itself out as a
4 20 professional employer organization, shares employees with a
4 21 commonly owned company within the meaning of section 414(b)
4 22 and (c) of the Internal Revenue Code of 1986, as amended.

4 23 (2) Arrangements by which a person assumes responsibility
4 24 for the product produced or service performed by such person
4 25 or the person's agents and retains and exercises primary
4 26 direction and control over the work performed by the

4 27 individuals whose services are supplied under such
4 28 arrangements.

4 29 (3) Providing temporary help services.

4 30 12. "Professional employer services" means the service of
4 31 entering into coemployment relationships under this chapter.

4 32 13. "Temporary help services" means services pursuant to
4 33 which a person does all of the following:

4 34 a. Recruits and hires employees.

4 35 b. Finds other organizations that need the services of
5 1 those employees.

5 2 c. Assigns those employees to perform work or services for
5 3 the other organizations to support or supplement the other
5 4 organizations' workforces, or to provide assistance in special
5 5 work situations such as, but not limited to, employee
5 6 absences, skill shortages, seasonal workloads, or to perform
5 7 special assignments or projects.

5 8 d. Customarily attempts to reassign the employees to other
5 9 organizations when they finish each assignment.

5 10 Sec. 3. NEW SECTION. 95.3 RIGHTS, DUTIES, AND
5 11 OBLIGATIONS.

5 12 1. COLLECTIVE BARGAINING AGREEMENTS. Nothing contained in
5 13 this chapter or in any professional employer agreement shall
5 14 affect, modify, or amend any collective bargaining agreement
5 15 or the rights or obligations of any client, professional
5 16 employer organization, or covered employee under the federal
5 17 National Labor Relations Act, the federal Railway Labor Act,
5 18 or the public employment relations Act in chapter 20. A
5 19 professional employer organization shall recognize and honor
5 20 any requirements or obligations of the client or a covered
5 21 employee under a collective bargaining agreement.

5 22 2. PUBLIC EMPLOYEES. An agreement between a public
5 23 employer as defined in section 20.3 and a professional
5 24 employer organization shall not operate to deny or limit the
5 25 rights, benefits, or employment of any covered employee who is
5 26 a coemployee of the public employer. Coemployment of a public
5 27 employee as a covered employee by a professional employer
5 28 organization pursuant to a professional employment agreement
5 29 between a public employer and a professional employer
5 30 organization shall not be deemed to limit or to prevent the
5 31 jurisdiction of the public employment relations board or the
5 32 application of any provision of chapter 20 with regard to the
5 33 public employee or the public employer.

5 34 3. LICENSING.

5 35 a. Nothing contained in this chapter or any professional
6 1 employer agreement shall affect, modify, or amend any state,
6 2 local, or federal licensing, registration, or certification
6 3 requirement applicable to any client or covered employee. A
6 4 covered employee who must be licensed, registered, or
6 5 certified according to law or regulation is deemed solely an
6 6 employee of the client for purposes of any such license,
6 7 registration, or certification requirement.

6 8 b. A professional employer organization shall not be
6 9 deemed to engage in any occupation, trade, profession, or
6 10 other activity that is subject to licensing, registration, or
6 11 certification requirements, or is otherwise regulated by a
6 12 governmental entity solely by entering into and maintaining a
6 13 coemployment relationship with a covered employee who is
6 14 subject to such requirements or regulation.

6 15 c. Unless otherwise expressly agreed to by the client in
6 16 the professional employer agreement, a client shall have the
6 17 sole right to direct and control the professional or licensed
6 18 activities of covered employees and of the client's business.

6 19 4. TAX CREDITS AND OTHER INCENTIVES. For purposes of
6 20 determination of tax credits and other economic incentives
6 21 provided by this state and based on employment, covered
6 22 employees shall be deemed employees solely of the client. A
6 23 client shall be entitled to the benefit of any tax credit,
6 24 economic incentive, or other benefit arising as the result of
6 25 the employment of covered employees of such client. If the
6 26 grant or amount of any such incentives is based on the number
6 27 of employees, then each client shall be treated as employing
6 28 only those covered employees actually working in the client's
6 29 business operations and covered employees working for other
6 30 clients of the professional employer organization shall not be
6 31 counted. Each professional employer organization shall
6 32 provide, upon request by a client or an agency or department
6 33 of this state, employment information reasonably required by
6 34 any agency or department of this state responsible for
6 35 administration of any such tax credit or economic incentive
7 1 and necessary to support any request, claim, application, or
7 2 other action by a client seeking any such tax credit or

7 3 economic incentive.
7 4 5. DISADVANTAGED BUSINESS. With respect to a bid,
7 5 contract, purchase order, or agreement entered into with the
7 6 state or a political subdivision of the state, a client
7 7 company's status or certification as a small, minority-owned,
7 8 disadvantaged, or woman-owned business enterprise or as a
7 9 historically underutilized business is not affected because
7 10 the client company has entered into an agreement with a
7 11 professional employer organization or uses the services of a
7 12 professional employer organization.

7 13 Sec. 4. NEW SECTION. 95.4 LICENSING REQUIREMENTS.

7 14 1. LICENSE REQUIRED. Except as otherwise provided in this
7 15 chapter, a person shall not provide, advertise, or otherwise
7 16 hold itself out as providing professional employer services in
7 17 this state, unless such person is licensed under this chapter.

7 18 2. LICENSING INFORMATION. Each applicant for licensure
7 19 under this chapter shall provide the department with all of
7 20 the following information:

7 21 a. The name or names under which the professional employer
7 22 organization conducts business.

7 23 b. The address of the principal place of business of the
7 24 professional employer organization and the address of each
7 25 office it maintains in this state.

7 26 c. The professional employer organization's taxpayer or
7 27 employer identification number.

7 28 d. A list by jurisdiction of each name under which the
7 29 professional employer organization has operated in the
7 30 preceding five years, including any alternative names, names
7 31 of predecessors, and if known, successor business entities.

7 32 e. A statement of ownership, which shall include the name
7 33 and evidence of the business experience of any person that,
7 34 individually or acting in concert with one or more other
7 35 persons, owns or controls, directly or indirectly, twenty-five
8 1 percent or more of the equity interests of the professional
8 2 employer organization.

8 3 f. A statement of management, which shall include the name
8 4 and evidence of the business experience of any person who
8 5 serves as president, chief executive officer, or otherwise has
8 6 the authority to act as senior executive officer of the
8 7 professional employer organization.

8 8 g. A financial statement setting forth the financial
8 9 condition of the professional employer organization, as of a
8 10 date not earlier than three hundred sixty-five days prior to
8 11 the date submitted to the department, prepared in accordance
8 12 with generally accepted accounting principles, and audited by
8 13 an independent certified public accountant licensed to
8 14 practice in the jurisdiction in which such accountant is
8 15 located. A professional employer organization group may
8 16 submit combined or consolidated audited financial statements
8 17 to meet the requirements of this section. A professional
8 18 employer organization that has not had sufficient operating
8 19 history for an audited financial statement based on at least
8 20 twelve months of operating history must meet the financial
8 21 capability requirements of section 95.6 and present pro forma
8 22 financial statements reviewed by a certified public
8 23 accountant.

8 24 3. INITIAL LICENSING. Each professional employer
8 25 organization operating within this state as of July 1, 2005,
8 26 shall complete its initial licensing not later than one
8 27 hundred eighty days after July 1, 2005. Such initial license
8 28 shall be valid until the end of the professional employer
8 29 organization's first fiscal year that is more than one year
8 30 after July 1, 2005. Each professional employer organization
8 31 not operating within this state as of July 1, 2005, shall
8 32 complete its initial licensing prior to commencement of
8 33 operations within this state.

8 34 4. RENEWAL. Within one hundred eighty days after the end
8 35 of a licensee's fiscal year, such licensee shall renew its
9 1 license by notifying the department of any changes in the
9 2 information provided in such licensee's most recent license or
9 3 renewal.

9 4 5. GROUP LICENSING. Any two or more professional employer
9 5 organizations held under common control of any other person or
9 6 persons acting in concert may be licensed as a professional
9 7 employer organization group. A professional employer
9 8 organization group may satisfy any reporting and financial
9 9 requirements of this chapter on a consolidated basis.

9 10 6. LIMITED LICENSE. A professional employer organization
9 11 is eligible for a limited license under this chapter if all of
9 12 the following apply:

9 13 a. The professional employer organization submits a

9 14 properly executed request for limited licensure on a form
9 15 provided by the department.

9 16 b. The professional employer organization is domiciled
9 17 outside this state and is licensed or registered as a
9 18 professional employer organization in another state that has
9 19 substantially the same or greater requirements as this
9 20 chapter.

9 21 c. The professional employer organization does not
9 22 maintain an office in this state or directly solicit clients
9 23 located or domiciled within this state.

9 24 d. The professional employer organization does not have
9 25 more than fifty covered employees employed or domiciled in
9 26 this state on any given day.

9 27 A limited license is valid for one year and may be renewed.
9 28 A professional employer organization seeking limited licensure
9 29 under this subsection shall provide the department with
9 30 information and documentation necessary to show that the
9 31 professional employer organization qualifies for a limited
9 32 license. Section 95.6, subsection 1, shall not apply to
9 33 applicants for limited licensure.

9 34 7. ALTERNATIVE LICENSURE. The department may by rule and
9 35 regulation provide for the acceptance of an affidavit or
10 1 certification of a bonded, independent, and qualified
10 2 assurance organization that has been approved by the director
10 3 certifying qualifications of a professional employer
10 4 organization in lieu of the requirements of this section and
10 5 section 95.6.

10 6 8. LIST. The department shall maintain a list of
10 7 professional employer organizations licensed under this
10 8 chapter.

10 9 9. FORMS. The department may prescribe forms necessary to
10 10 promote the efficient administration of this section.

10 11 10. RECORD CONFIDENTIALITY.

10 12 a. Except as provided in paragraph "b", all records,
10 13 reports, and other information obtained from a professional
10 14 employer organization under this chapter, except to the extent
10 15 necessary for the proper administration of this chapter by the
10 16 department, shall be confidential and shall not be published
10 17 or open to public inspection other than to public employees in
10 18 the performance of their public duties.

10 19 b. Any agreement between a professional employer
10 20 organization and a public employer, and any records, reports,
10 21 or other information concerning a covered employee whose
10 22 coemployer is a public employer shall be open to public
10 23 inspection pursuant to chapter 22 to the same extent such
10 24 agreements, records, reports, and information are open to
10 25 public inspection for a government body under chapter 22.

10 26 Sec. 5. NEW SECTION. 95.5 FEES == APPROPRIATION.

10 27 1. INITIAL LICENSURE. Upon filing an initial license
10 28 application under this chapter, a professional employer
10 29 organization shall pay an initial license fee not to exceed
10 30 one thousand dollars.

10 31 2. RENEWAL. Upon each annual renewal of a license under
10 32 this chapter, a professional employer organization shall pay a
10 33 renewal fee not to exceed one thousand dollars.

10 34 3. LIMITED LICENSURE. Each professional employer
10 35 organization seeking limited licensure under the terms of this
11 1 chapter shall pay a fee in an amount not to exceed five
11 2 hundred dollars upon initial application for limited licensure
11 3 and upon each annual renewal of such limited license.

11 4 4. ALTERNATIVE LICENSURE. A professional employer
11 5 organization seeking alternative licensure shall pay an
11 6 initial and annual fee not to exceed five hundred dollars.

11 7 5. OTHER FEES. The department shall adopt by rule any
11 8 other fee to be charged under this chapter. Such fees shall
11 9 not exceed those reasonably necessary for the administration
11 10 of the duties of the department under this chapter.

11 11 6. APPROPRIATION. Fees collected pursuant to this section
11 12 are appropriated to the department for the costs of
11 13 administration of this chapter.

11 14 Sec. 6. NEW SECTION. 95.6 FINANCIAL CAPABILITY.

11 15 Each professional employer organization shall maintain
11 16 either of the following:

11 17 1. A minimum net worth of one hundred thousand dollars as
11 18 reflected in the financial statements submitted to the
11 19 department with the initial license application and each
11 20 annual renewal.

11 21 2. A bond, securities, or bank letter of credit with a
11 22 minimum value of one hundred thousand dollars held by a
11 23 depository designated by the department, securing payment by
11 24 the professional employer organization of all taxes, wages,

11 25 benefits, or other entitlement due to or with respect to
11 26 covered employees, if the professional employer organization
11 27 does not make such payments when due. Any bond or securities
11 28 deposited under this subsection shall not be included for the
11 29 purpose of calculation of the minimum net worth required by
11 30 this section.

11 31 Sec. 7. NEW SECTION. 95.7 GENERAL REQUIREMENTS AND
11 32 PROVISIONS.

11 33 1. CONTRACTUAL RELATIONSHIP. Except as specifically
11 34 provided in this chapter, the coemployment relationship
11 35 between the client and the professional employer organization,
12 1 and between each coemployer and each covered employee, shall
12 2 be governed by the professional employer agreement.

12 3 a. Nothing contained in any professional employer
12 4 agreement or this chapter shall be deemed to do any of the
12 5 following:

12 6 (1) Diminish, abolish, or remove rights of covered
12 7 employees as to clients or obligations of such client as to a
12 8 covered employee existing prior to the effective date of a
12 9 professional employer agreement.

12 10 (2) Terminate an employment relationship existing prior to
12 11 the effective date of a professional employer agreement.

12 12 (3) Create any new or additional enforceable right of a
12 13 covered employee against a professional employer organization
12 14 not specifically allocated to such professional employer
12 15 organization in the professional employer agreement or this
12 16 chapter.

12 17 b. Each professional employer agreement shall include all
12 18 of the following:

12 19 (1) The professional employer organization shall reserve a
12 20 right of direction and control over the covered employees,
12 21 provided that the client may retain the right to exercise such
12 22 direction and control over covered employees as is necessary
12 23 to conduct the client's business, to discharge any fiduciary
12 24 responsibility which it may have, or to comply with any
12 25 applicable licensure requirements.

12 26 (2) The professional employer organization shall have the
12 27 responsibility to pay agreed-upon wages to covered employees;
12 28 to withhold, collect, report, and remit payroll-related and
12 29 unemployment taxes; and, to the extent the professional
12 30 employer organization has assumed responsibility in the
12 31 professional employer agreement, to make payments for employee
12 32 benefits for covered employees. As used in this subparagraph,
12 33 "wages" does not include any obligation between a client and a
12 34 covered employee for payments beyond or in addition to the
12 35 covered employee's salary, draw, or regular rate of pay, such
13 1 as bonuses, commissions, severance pay, deferred compensation,
13 2 profit sharing or vacation, sick or other paid time-off pay,
13 3 unless the professional employer organization has expressly
13 4 agreed to assume liability for such payments in the
13 5 professional employer agreement.

13 6 (3) The professional employer organization and the client
13 7 shall both have a right to hire, terminate, and discipline the
13 8 covered employees. Such right shall not limit the rights and
13 9 remedies of covered employees under a collective bargaining
13 10 agreement.

13 11 (4) The responsibility to obtain workers' compensation
13 12 coverage for covered employees, from a carrier licensed to do
13 13 business in this state and otherwise in compliance with all
13 14 applicable requirements, shall be specifically allocated to
13 15 either the client or the professional employer organization.
13 16 If such responsibility is allocated to the professional
13 17 employer organization under the agreement, the agreement shall
13 18 require that the professional employer organization maintain
13 19 and provide to the client at the termination of the agreement,
13 20 if requested by the client, records regarding the loss
13 21 experience related to workers' compensation insurance provided
13 22 to covered employees pursuant to such agreement.

13 23 2. ALLOCATION OF RIGHTS, DUTIES, AND OBLIGATIONS. Except
13 24 as specifically provided in this chapter or in the
13 25 professional employer agreement, in each coemployment
13 26 relationship, all of the following shall apply:

13 27 a. The client shall be entitled to exercise all rights and
13 28 shall be obligated to perform all duties and responsibilities
13 29 otherwise applicable to an employer in an employment
13 30 relationship.

13 31 b. The professional employer organization shall be
13 32 entitled to exercise only those rights, and obligated to
13 33 perform only those duties and responsibilities, specifically
13 34 required by this chapter or set forth in the professional
13 35 employer agreement. The rights, duties, and obligations of

14 1 the professional employer organization as coemployer with
14 2 respect to any covered employee shall be limited to those
14 3 arising pursuant to the professional employer agreement and
14 4 this chapter during the term of coemployment by the
14 5 professional employer organization of such covered employee.
14 6 c. Unless otherwise expressly agreed by the professional
14 7 employer organization and the client in a professional
14 8 employer agreement, the client retains the exclusive right to
14 9 direct and control the covered employees as is necessary to
14 10 conduct the client's business, to discharge any of the
14 11 client's fiduciary responsibilities, or to comply with any
14 12 licensure requirements applicable to the client or to the
14 13 covered employees.

14 14 3. NOTICE TO COVERED EMPLOYEES. With respect to each
14 15 professional employer agreement entered into by a professional
14 16 employer organization, such professional employer organization
14 17 shall provide written notice to each covered employee affected
14 18 by such agreement of the general nature of the coemployment
14 19 relationship between and among the professional employer
14 20 organization, the client, and such covered employee. Such
14 21 notice shall include notice to the employees of the client's
14 22 and the professional employer organization's obligations under
14 23 this section including but not limited to the party
14 24 responsible for the provision of employee benefits, if any.

14 25 4. LIMITATIONS ON LIABILITY. Except to the extent
14 26 otherwise expressly provided by a professional employer
14 27 agreement, all of the following shall apply:

14 28 a. A client shall be solely responsible for the quality,
14 29 adequacy, or safety of the goods or services produced or sold
14 30 in the client's business.

14 31 b. A client shall be solely responsible for directing,
14 32 supervising, training, and controlling the work of the covered
14 33 employees with respect to the business activities of the
14 34 client and solely responsible for the acts, errors, or
14 35 omissions of the covered employees with regard to such
15 1 activities.

15 2 c. A client shall not be liable for the acts, errors, or
15 3 omissions of a professional employer organization, or of any
15 4 covered employee of the client and a professional employer
15 5 organization when such covered employee is acting under the
15 6 express direction and control of the professional employer
15 7 organization.

15 8 d. Nothing in this subsection shall serve to limit any
15 9 contractual liability or obligation specifically provided in a
15 10 professional employer agreement, nor shall this subsection in
15 11 any way limit the liabilities and obligations of any
15 12 professional employer organization or client as defined
15 13 elsewhere in this chapter.

15 14 e. A covered employee is not, solely as the result of
15 15 being a covered employee of a professional employer
15 16 organization, an employee of the professional employer
15 17 organization for purposes of general liability insurance,
15 18 fidelity bonds, surety bonds, employer's liability which is
15 19 not covered by workers' compensation, or liquor liability
15 20 insurance carried by the professional employer organization
15 21 unless the covered employee is included by specific reference
15 22 in the professional employer agreement and applicable
15 23 prearranged employment contract, insurance contract, or bond.

15 24 5. JOINT AND SEVERAL LIABILITY. Notwithstanding the terms
15 25 of the professional employer agreement or any other provision
15 26 of this chapter, the professional employer organization and
15 27 the client are jointly and severally liable for any claims by
15 28 a covered employee for unpaid or improperly paid wages,
15 29 benefits, or other compensation for services, and for any
15 30 claims of unlawful or improper discharge, discipline, or
15 31 failure to hire.

15 32 6. SALE OF INSURANCE. A professional employer
15 33 organization or its representative shall not sell, solicit, or
15 34 negotiate insurance unless licensed as an insurance producer
15 35 pursuant to chapter 522B.

16 1 7. TAXATION. Covered employees whose services are subject
16 2 to sales tax shall be deemed the employees of the client for
16 3 purposes of collecting and levying sales tax on the services
16 4 performed by the covered employee. Nothing contained in this
16 5 chapter shall relieve a client of any sales tax liability with
16 6 respect to its goods or services. Any tax upon professional
16 7 employer services shall be limited to the administrative fee.

16 8 Sec. 8. NEW SECTION. 95.8 BENEFIT PLANS.

16 9 1. A client and a professional employer organization shall
16 10 each be deemed an employer for purposes of sponsoring
16 11 retirement and welfare benefit plans for its covered

16 12 employees.

16 13 2. A fully insured welfare benefit plan offered to the
16 14 covered employees of a single professional employer
16 15 organization shall be considered a single employer welfare
16 16 benefit plan and shall not be considered a multiple employer
16 17 welfare arrangement as defined in section 3 of the federal
16 18 Employee Retirement Income Security Act of 1974, 29 U.S.C. }

16 19 1002, paragraph 40, and referred to in section 507A.4.
16 20 3. If a professional employer organization offers to its
16 21 covered employees any health benefit plan which is not fully
16 22 insured by an authorized insurer, the plan shall do all of the
16 23 following:

16 24 a. Utilize a third-party administrator licensed to do
16 25 business in this state.

16 26 b. Hold all plan assets, including participant
16 27 contributions, in a trust account.

16 28 c. Provide sound reserves for such plan as determined
16 29 using generally accepted actuarial standards.

16 30 Sec. 9. NEW SECTION. 95.9 WORKERS' COMPENSATION.

16 31 1. The professional employer organization and the client
16 32 are jointly and severally liable for providing a workers'
16 33 compensation insurance policy and benefits for covered
16 34 employees from a carrier licensed to do business in this state
16 35 and for compliance with all statutory and regulatory
17 1 requirements concerning workers' compensation. Workers'
17 2 compensation insurance coverage or benefits that are provided
17 3 by either coemployer satisfy the liability of both
17 4 coemployers. The allocation of responsibility between the
17 5 coemployers in the professional employer agreement is an
17 6 agreement between the coemployers and does not limit the
17 7 rights of a covered employee, government agency, or third
17 8 party.

17 9 2. Both the client and the professional employer
17 10 organization shall be considered the employer for the purpose
17 11 of coverage under the workers' compensation laws provided in
17 12 chapters 85, 85A, and 85B, and both the professional employer
17 13 organization and its client shall be entitled to protection of
17 14 the exclusive remedy provision in section 85.20, irrespective
17 15 of which coemployer obtains such workers' compensation
17 16 coverage.

17 17 3. A workers' compensation insurance policy provided to a
17 18 professional employer organization shall comply with the
17 19 requirements provided in chapter 87.

17 20 4. Nothing in this section shall limit the rights and
17 21 remedies of covered employees under a collective bargaining
17 22 agreement.

17 23 Sec. 10. NEW SECTION. 95.10 UNEMPLOYMENT COMPENSATION
17 24 INSURANCE.

17 25 For purposes of the Iowa employment security law in chapter
17 26 96, covered employees of a licensed professional employer
17 27 organization are considered the employees of the client. The
17 28 professional employer organization shall be responsible for
17 29 the payment of contributions, penalties, and interest on wages
17 30 paid by the professional employer organization to its covered
17 31 employees during the term of the applicable professional
17 32 employer agreement.

17 33 Sec. 11. NEW SECTION. 95.11 VIOLATIONS == PENALTIES.

17 34 1. a. A person shall not offer or provide professional
17 35 employer services or use the title "professional employer
18 1 organization", "PEO", "staff leasing company", "employee
18 2 leasing company", "licensed staff leasing company",
18 3 "administrative employer", or other title representing the
18 4 provision of professional employer services unless licensed
18 5 pursuant to this chapter.

18 6 b. A person shall not knowingly provide false or
18 7 fraudulent information to the department in conjunction with a
18 8 license, renewal, or any other requirement of this chapter.

18 9 2. A person who willfully violates subsection 1 is guilty
18 10 of an aggravated misdemeanor.

18 11 3. An agent, officer, director, manager, or other person
18 12 who exercises control over the actions of a client who falsely
18 13 or fraudulently procures or attempts to procure services or
18 14 benefits from a professional employer organization licensed
18 15 under this chapter without having adequate funds to compensate
18 16 the professional is guilty of a fraudulent practice and is
18 17 subject to the penalties provided for commission of a
18 18 fraudulent practice under chapter 714.

18 19 Sec. 12. NEW SECTION. 95.12 LICENSE DENIAL, RESTRICTION,
18 20 OR REVOCATION.

18 21 The department may deny an application for a license or
18 22 restrict or revoke a license issued pursuant to this chapter,

18 23 if the department finds any of the following after notice and
18 24 opportunity for a hearing:

18 25 1. That the applicant or professional employer
18 26 organization violated section 95.11, subsection 1.

18 27 2. That the applicant or professional employer
18 28 organization knowingly made a material misrepresentation to
18 29 the department or any other governmental agency.

18 30 3. That the applicant or professional employer
18 31 organization willfully violated any provision of this chapter
18 32 or rule adopted pursuant to this chapter, or an order issued
18 33 by the department.

18 34 Sec. 13. NEW SECTION. 95.13 SEVERABILITY.

18 35 The provisions of this chapter are severable. If any
19 1 provision of this chapter, or application thereof to any
19 2 person or circumstance, is held invalid, such invalidity shall
19 3 not affect other provisions or applications of this chapter
19 4 which can be given effect without the invalid provision or
19 5 application.

19 6 Sec. 14. NEW SECTION. 95.14 RULES == INJUNCTIONS.

19 7 1. The department shall adopt rules necessary to
19 8 administer this chapter.

19 9 2. The director may seek injunctive relief to enforce this
19 10 chapter in the manner provided in section 96.14, subsection
19 11 16.

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